BEFORE THE

Federal Communications Commission

WASHINGTON, D. C.

In the Matter of	)	
	)	
Grandfathered Short-Spaced	)	MM Docket No. 96-120
FM Stations	)	RM-7651
	)	
Notice of Proposed Rule Making	)	

COMMENTS OF ODYSSEY COMMUNICATIONS, INC.

Odyssey Communications, Inc. ("Odyssey"), by its attorneys, respectfully submits these Comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding. 1/

As the licensee of three grandfathered, short-spaced Class A FM stations, 2/ Odyssey urges the Commission to adopt rules which provide grandfathered, short-spaced stations with the flexibility to modify their facilities and improve service to the public. Accordingly, Odyssey supports the Commission's proposal to eliminate the second- and third-adjacent-channel spacing requirements

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1/ Grandfathered Short-Spaced FM Stations, Notice of Proposed Rulemaking, MM Docket No. 96-120, RM-7651 (released June 14, 1996) ("NPRM").

2/ Odyssey is the licensee of WRGX(FM), Briarcliff Manor, New York, WRKL(AM), New City, New York, KLYY(FM), Arcadia, California, KVYY(FM), Ventura, California, KSYY(FM), Fallbrook, California, and KWIZ-FM, Santa Ana, California. WRGX(FM), KLYY(FM) and KWIZ-FM are "grandfathered stations" pursuant to the Commission's definition of the term. See NPRM at ¶ 1, n.1 ("the term 'grandfathered stations' refers only to those FM stations at locations authorized prior to November 16, 1964, that did not meet the separation distances required by the later adopted Section 73.207 and have remained short-spaced since that time").

for grandfathered short-spaced stations. 3/ However, Odyssey opposes the proposed elimination of the policy on agreements between grandfathered stations. 4/ This change could limit the ability of some stations, including WRGX(FM) and KWIZ-FM, to optimize their facilities and thus would have a harmful effect on these stations and the public interest alike.

I. The Second- And Third-Adjacent Channel Spacing Requirements Prevent Grandfathered Short-Spaced Stations From Optimizing Their Facilities And Should Be Eliminated.

Odyssey urges the Commission to adopt its proposal to eliminate the second- and third-adjacent-channel spacing requirements for grandfathered short-spaced stations. 5/ As the Commission correctly acknowledges, the elimination of these requirements will greatly increase the flexibility of grandfathered, short-spaced stations to optimize or relocate their facilities. 6/ The consequent improvement in radio station facilities in turn will serve the public interest. 7/

3/ NPRM at ¶¶ 8, 25.

4/ Id. at ¶¶ 8, 30.

5/ These spacing requirements were adopted in 1987, see Second Report and Order, MM Docket No. 86-144, 2 FCC Rcd 5693 (1987), recon. granted in part 3 FCC Rcd 2477 (1988), and are codified at Section 73.213 of the Commission's rules. 47 C.F.R. § 73.213.

6/ NPRM at ¶ 25.

7/ See Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations, Second Report and Order, 4 FCC Rcd 6375, 6380 (1989), on recon., 6 FCC Rcd 3417 (1991).

Moreover, these benefits will be accompanied by a minimal risk of interference. Most of the interference that results from the elimination of these requirements will be localized in the immediate area of the transmitter and will merely replace existing interference. 8/ As the Commission has recognized, "creating these small areas of potential interference to some receivers is more than outweighed by enhancing the ability of existing stations to modify and improve service." 9/ Given the overwhelming advantages, the Commission should adopt its proposal to eliminate the second- and third-adjacent-channel spacing requirements for grandfathered short-spaced stations.

Odyssey provides a cogent example of the public benefits that will result from the elimination of the second- and third-adjacent-channel spacing requirements. If these requirements are eliminated, Odyssey will have the flexibility to increase the power level of station KLYY(FM), Arcadia, California, without requiring a waiver, from 3 kW to 6 kW, the maximum authorized power for Class A FM stations. 10/ This increased power level will enable KLYY(FM) to extend 1.0 mV/m service to an additional 1,631,264 persons. In contrast, the majority of the predicted interference caused to two second-adjacent grandfathered short-spaced stations will occur in the uninhabited Angeles National Forest. The

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8/ NPRM at ¶ 24.

9/ Id.

10/ See Amendment of Part 73 of the Rules to Provide for an Additional FM Station Class (Class C3) and to Increase the Maximum Transmitting Power for Class A FM Stations, Second Report and Order 4 FCC Rcd at 6380.

power increase will create predicted interference to only approximately 97 people. 11/ This minimal *predicted* interference will be far outweighed by the dramatic improvement in KLYY(FM)'s coverage and service to the public. Furthermore, as the Commission noted, this small affected area will merely experience a substitution of service. 12/

II. The Commission's Proposal To Eliminate The Policy On Agreements Between Grandfathered Stations Would Be Harmful To Stations And The Public Interest.

While the Commission's proposals (1) to use a predicted interference analysis based on the desired to undesired signal strength ratio method, 13/ and (2) to eliminate the second- and third-adjacent-channel spacing requirements, 14/ are designed to improve the flexibility of grandfathered short-spaced stations to optimize their facilities. the proposal to eliminate the policy on agreements between grandfathered short-spaced stations for increases in facilities (the "Agreement Policy"), 15/ could undermine that flexibility and ultimately harm the public interest.

The Agreement Policy allows mutual increases in pre-1964 grandfathered short-spaced stations where there is an agreement among the

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11/ See Engineering Statement at 1-3, attached as Exhibit 1.

12/ See NPRM at ¶¶ 24, 25.

13/ Id. at ¶¶ 8, 14.

14/ Id. at ¶¶ 8, 25.

15/ Id. at ¶ 30.

stations and the stations demonstrate that the increases will serve the public interest. 16/ The Commission proposes overturning this rule on the theory that: (1) such agreements would be unnecessary if the Commission adopts its first two proposals, (2) elimination of the policy would not have any harmful effect upon radio stations or the public, and (3) the Agreement Policy is rarely used for its original purpose of providing for mutual increases. 17/ However, the Commission's rationale is incorrect.

First, in some cases, the Agreement Policy may be necessary even after the Commission eliminates the second- and third-adjacent-channel spacing requirements. For instance, some stations, including Odyssey's Stations WRGX(FM), Briarcliff Manor, New York, and KWIZ-FM, Santa Ana, California, are (pre-1964) short-spaced to co-channel or first-adjacent stations as well as to second- and third-adjacent-channel stations. These co-channel and first-adjacent-channel short-spaced stations have been prohibited in some cases from implementing mutual increases in power under the Agreement Policy because of second- and third-adjacent-channel short spacings. 18/ It would be highly ironic if the Agreement Policy were eliminated just as the stations' second- and third-adjacent-channel short spacing problems disappeared and the Agreement Policy became potentially necessary.

16/ See 47 C.F.R. § 73.213(a).

17/ NPRM at ¶ 30.

18/ See Engineering Statement at 4, attached as Exhibit 1.

Second, the elimination of the Agreement Policy will indeed have a harmful effect on stations and the public interest. Those stations which still need the Agreement Policy in order to improve their facilities will be harmed if the Commission eliminates the policy. The public will also be harmed if it does not receive the benefit of improved radio facilities.

Third, if the Commission is concerned that the Agreement Policy is rarely used for its original purposes, then it should permit the use of the policy only for its intended purposes instead of eliminating the policy altogether. Stations which need the Agreement Policy for mutual increases in power should not be penalized because others have used the policy for other purposes.

While the Commission's reasons for eliminating the Agreement Policy are faulty, there are many reasons to retain the Agreement Policy. The policy provides stations with the flexibility to optimize their facilities, a goal which the Commission has sought to promote in this proceeding. 19/ The improvement of radio facilities in turn serves the public interest. The Agreement Policy also gives grandfathered short-spaced stations -- who "became short-spaced through no fault of their own" 20/ -- the opportunity that non-grandfathered stations have under Section 73.213(c)(2) to increase their facilities with the consent of co-channel or first-adjacent-channel stations.

Meanwhile, there are an "extremely limited" number of stations which are even affected by the Agreement Policy. 21/ The Commission cited the "limited universe of eligible grandfathered stations" as a reason for improving flexibility by eliminating the second- and third-adjacent-channel spacing requirements. 22/ That factor should not be used in the same proceeding as a rationale for limiting flexibility. Instead, the limited applicability of the Agreement Policy will ensure the continued minimal burden on the FCC. While rarely applicable, the Agreement Policy may be critical to such stations and the public that will benefit from improved services. Accordingly, the Agreement Policy should be retained.

III. Conclusion

Odyssey urges the Commission to eliminate the second- and third-adjacent-channel interference restrictions for grandfathered short-spaced stations. Elimination of these requirements will increase stations' flexibility to optimize their facilities and improve service to the public. However, the Commission should retain

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21/ Id. at ¶ 30.

22/ Id. at ¶ 25.

the Agreement Policy so that it does not undermine many of the benefits obtained from eliminating the second- and third-adjacent-channel interference restrictions for grandfathered short-spaced stations.

Respectfully submitted,

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CARL T. JONES
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STATEMENT OF WILLIAM J. GETZ
IN SUPPORT OF COMMENTS
IN MM DOCKET NO. 96-120

Prepared for: Odyssey Communications, Inc.

I am a Radio Engineer in the firm of Carl T. Jones Corporation with offices located in Springfield, Virginia. My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by Odyssey Communications, Inc. ("Odyssey"), licensee of WRGX(FM), Briarcliff Manor, New York, WRKL(AM), New City, New York, KLYY(FM), Arcadia, California, KVYY(FM), Ventura, California, KSYY(FM), Fallbrook, California, and KWIZ-FM, Santa Ana, California, to prepare this statement in support of Comments in MM Docket No. 96-120. Three of the stations licensed to Odyssey -- WRGX(FM), KLYY(FM) and KWIZ-FM -- are grandfathered short-spaced stations.

1. Elimination of Second-Adjacent and Third-Adjacent Channel Interference Restrictions.

The elimination of the second-adjacent and third-adjacent channel interference restrictions for grandfathered stations would improve Odyssey's flexibility to increase the power level of KLYY(FM) from 3 kW to 6 kW and thus extend service to an additional 1,631,264 persons. Two second-adjacent channel related stations have been short-spaced to KLYY(FM) continuously from prior to November, 1964, to the present time:

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KROQ-FM, Pasadena, California, and KLVE(FM), Los Angeles, California. These stations are considered to be pre-1964 grandfathered short-spaced stations and any modifications to KLYY(FM) are governed by Section 73.213(a) of the FCC Rules with respect to both of these stations. Under the current Section 73.213(a) of the FCC Rules, KLYY(FM) must maintain its current 1.0 mV/m contour distance toward the 1.0 mV/m contour of both KROQ-FM and KLVE(FM). This is technically impossible because the KLYY(FM) transmitter site lies within the 1.0 mV/m contour of both KROQ-FM and KLVE(FM).

If the second-adjacent and third-adjacent channel interference requirements for grandfathered stations were eliminated and KLYY(FM) were to implement a nondirectional increase in ERP from 3.0 kW to 6.0 kW, the maximum allowable Class A Effective Radiated Power, the increase in power will not adversely effect grandfathered short-spaced stations KROQ-FM and KLVE(FM).

Using the FCC's F(50,50) propagation curves it was determined that the KLVE(FM) field strength at the KLYY(FM) transmitter site is 104 dBu. The corresponding KLYY(FM) second-adjacent channel interfering contour is the 144 dBu contour. Considering free-space propagation, the hypothetical KLYY(FM) 144 dBu interfering contour does not reach the ground. As a result, no interference is predicted to occur to KLVE(FM) as a result of an increase in KLYY(FM)'s power level.

Similarly, using the FCC's F(50,50) propegation curves it was determined that the KROQ-FM field strength at the KLYY(FM) transmitter site is 78 dBu. The corresponding

KLYY(FM) second-adjacent channel interfering contour is the 118 dBu contour. Considering free-space propagation, the hypothetical KLYY(FM) 118 dBu interfering contour extends 0.68 km. The majority of the predicted interference area is in the uninhabited Angeles National Forest and the wilderness between the National Forest and the nearby urbanized areas. The KLYY(FM) interference area would contain zero people in the Sierra Madre urbanized area and the South Antelope County subdivision. The interference area does reach a small percentage (1% as determined using a polar planimeter) of the Arcadia urbanized area. Assuming a uniform distribution of population, the population within this interference area is 483 people. It should be noted that this number most likely overestimates the affected number of people because the interference area only reaches a dead end street on the extreme north edge of the urbanized area.

Considering free-space propagation, the licensed KLYY(FM) 118 dBu interfering contour extends 0.48 km. Assuming a uniform distribution of population, the population within the licensed area of interference caused to KROQ-FM is 386 people. Therefore, an increase in KLYY(FM)'s power level is predicted to cause predicted interference to approximately 97 people within the KROQ-FM primary service area.

An increase in KLYY(FM)'s power level would allow KLYY(FM) to extend its 1.0 mV/m service area to an additional 1,631,264 persons. The population within the present KLYY(FM) 1.0 mV/m contour is 8,699,638 persons. The population within the hypothetical 1.0 mV/m contour is 10,330,902 persons

2. Agreement Policy

The Commission's proposal to eliminate the Agreement Policy of Section 73.213(a) could limit the flexibility of stations such as KWIZ-FM and WRGX(FM) to optimize their facilities.

Radio station KWIZ-FM is short-spaced to two second-adjacent channel related Class B stations and one cochannel Class A station.[1] The KWIZ-FM short-spacings have existed continuously from prior to November, 1964, to the present time.

Similarly, WRGX(FM) is short-spaced to five stations.[2] Three of the WRGX(FM) short-spacings have existed continuously from prior to November, 1964, to the present time. Of the three pre-1964 short-spacings, two are second-adjacent channel related Class B stations and one is a cochannel Class A station. The remaining WRGX(FM) short-spacings result from the Commission's revision of the minimum distance spacing requirements for Class A facilities (See Second Report and Order, MM Docket 88-375, 4 FCC Rcd 6375 (1989)).

[1] Considering the minimum distance separations contained in Section 73.207 of the FCC Rules, KWIZ-FM is short-spaced to KFSG, Los Angeles, CA (Channel 242B), KCAL-FM, Redlands, CA (Channel 244A), and KLSX, Los Angeles, CA (Channel 246B).

[2] Considering the minimum distance separations contained in Section 73.207 of the FCC Rules, WRGX(FM) is short-spaced to WLTW, New York, NY (Channel 294B), WZVU, Long Branch, NJ (Channel 296A), WWHB, Hampton Bays, NY (Channel 296A), WRWD-FM, Highland, NY (Channel 297A), and WBLS, New York, NY (Channel 296B).

Because of the FCC's current second and third-adjacent channel interference restrictions for grandfathered stations, KWIZ-FM and WRGX(FM) have been unable to pursue mutual increases in power with co-channel and first-adjacent channel stations under the current Agreement Policy. Stations such as KWIZ-FM and WRGX(FM) may need the Agreement Policy to implement increases in power, even if the Commission eliminates the second-adjacent and third-adjacent channel interference restrictions on grandfathered stations. This is because, as discussed above, these stations will still face co-channel or first-adjacent channel pre-1964 short-spacings.

This statement was prepared by me or under my direct supervision and is believed to be true and correct.

DATED: July 22, 1996

William J. Getz